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## A Review of University Responses to Informal Queries and Open Records Requests for Aggregate Hiring-Related Data

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# **A Review of University Responses to Informal Queries and Open Records Requests for Aggregate Hiring-Related Data**

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A capstone project submitted to the faculty of the Martin School of Public Policy and Administration at the University of Kentucky as a final requirement to earn a Master in Public Administration degree.

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## **Executive Summary**

Open records (OR) laws ensure that members of the public, including public managers, directors of nonprofit organizations, and individual citizens, have access to the records created by public agencies. Local government and state government agencies are generally recognized to be subject to OR laws, but so are Kentucky's public universities. The author created a survey to review the responses to both an informal query and a formal open records request made of Kentucky's eight public, four-year universities (Eastern Kentucky University; Kentucky State University; Morehead State University; Murray State University; Northern Kentucky University; University of Kentucky; University of Louisville; and Western Kentucky University).

Diversity is a common topic at universities across the country, but most discussions pertain to the student body and to faculty. In higher education, OR laws are most commonly discussed in relation to openness and transparency in presidential searches, financial foundation activities, and governing board discussions. There are almost no discussions about diversity among the non-teaching staff. Academic literature that combines diversity and OR laws is not common, but it may develop as diversity conversations continue. McLendon and Hearn (2006) commented on the effect of OR laws on the many facets of a university, including its personnel activities. The issue of implicit gender-, race-, and ethnicity-based bias could be an area of interest for a public manager or nonprofit director, but the first step is accessing the information. Given the number of studies that demonstrate the workplace inequities faced by individuals from underrepresented populations<sup>1</sup>, the author developed a survey that included gender-, race-, and ethnicity-related data for applicants and those hired into secretarial and clerical positions. The data received would not be evaluated through a statistical technique or method, but rather the survey was intended to describe the responses to the queries and to the OR requests.

The author first informally queried human resources officials for the gender-, race-, and ethnicity-related data via electronic mail and if that was not fruitful, the author submitted an OR request. There was little to no consistency among university responses to the survey. Three institutions responded to the author's informal query almost exactly as asked (Morehead State University, Murray State University, and University of Kentucky); these three were the only institutions that provided the information in the format requested. Two responded to the OR request, one with information that was almost what the author requested and in the right format (Northern Kentucky University), and one responded with detailed, individually identifiable data in PDF format (Western Kentucky University). Three universities completely denied the author's OR requests (Eastern Kentucky University, Kentucky State University, and University of Louisville). Until OR laws are applied consistently and correctly at Kentucky's public universities, public managers and nonprofit directors may find it difficult to review these universities' workplace hiring and evaluation activities.

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<sup>1</sup> Hamner, Kim, Baird, & Bigoness, 1974; Biernat & Kobrynowicz, 1997; Stewart & Perlow, 2001; Richeson & Ambady, 2002; Bertrand & Mullainathan, 2003; and Ziegert & Hanges, 2005.

## **Introduction**

Within the United States, every state and the District of Columbia has addressed the rights of citizens to see records of public agencies through open records (OR) legislation and freedom of information laws (Stewart, 2010). In addition to citizens, public managers and directors of non-profit organizations also have a vested interest in being able to access records created by public agencies. Included in the category of public agencies are Kentucky's eight publicly funded, four-year universities (Kentucky Revised Statutes (KRS) 61.870.1.f, i., and j.). When individual citizens want to learn more about how their public universities function, open records (OR) laws ensure that the process of gathering public information is free from unnecessary roadblocks and delays. Kentucky's eight public, four-year institutions (in alphabetical order) are: Eastern Kentucky University (Eastern KY Univ.); Kentucky State University (KY State Univ.); Morehead State University (Morehead State Univ.); Murray State University (Murray State Univ.); Northern Kentucky University (Northern KY Univ.); University of Kentucky (Univ. of KY); University of Louisville (Univ. of Louisville); and Western Kentucky University (Western KY Univ.)

The survey was developed to first allow for an informal solicitation for information (informal query, or "query") presumed held by each university. If the query was unsuccessful, the author then made a formal solicitation for information (formal OR, or "OR request"). The objective of the survey was to discover any variation in how Kentucky's eight public, four-year universities responded to these two types of solicitations for information about certain types of hiring-related records. The specific information requested was the gender, race, and ethnicity of all applicants for secretarial and clerical positions during the period of July 1, 2014 – June 30, 2015, as well as the same demographic data for those hired into those positions. The author first

emailed an institution's Human Resources (HR) official for the data via electronic mail (email) and if that was not fruitful, the author then submitted an OR request to the appropriate unit for the data.

The author selected these pieces of demographic information because of their relevance to contemporary discourse in the public sphere, specifically higher education. Diversity is a topic of conversation at colleges and universities across the United States. One diversity-related topic that has not received much attention is the matter of diversity in the staff workforce at public universities. While faculty employees bear most of the responsibility for educating students, there are myriad staff employees engaged with students in other areas. A public manager or a director of a nonprofit might want to know if there was evidence that Kentucky's eight public, four-year universities were, or were not, hiring staff employees of all genders, races, and ethnicities as equitably as possible into all levels of employment categories. Without access to the hiring data from Kentucky's eight universities, no one can evaluate whether hiring practices are fair to all job applicants.

### **Literature Review**

State OR laws grant the legal right to know how public agencies function. The issue of public access to public information has been a subject of interest for many years, along with a concomitant concern about the possibility of infringement(s) of the right to know. In 1822, James Madison reflected on the importance of state financial support for education and on transparency in education.

The liberal appropriations made by the Legislature of Kentucky for a general system of Education cannot be too much applauded. A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a

Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance:

And a people who mean to be their own Governors, must arm themselves with the  
power which knowledge gives (Madison, 1822, first paragraph).

In addition to the right to know about public agencies in general, citizens of Kentucky have an  
inherent right to know as it pertains to their educational system, including higher education.

Public managers are not typical utilizers of OR laws, but there is no denying the value of having  
correct, up-to-date information. A public manager may want to learn about the demographic  
information of people who have applied for certain staff employee jobs and compare it to the  
demographic information of those hired for certain jobs. This sort of information would be  
instrumental in an evaluation to determine equity in hiring and evaluation practices, regardless of  
whether it is conducted by a public manager, nonprofit director, or private citizen.

McLendon (2010) explains that “by diffusing information and making it broadly  
accessible to different interests within society, public information laws help thwart the  
overaccumulation of power by too few interests” (p. 2654). Kentucky’s legislature established a  
citizen’s right to know with the approval of its OR statute in 1976 (The Reporters Committee for  
Freedom of the Press, 2011). Among other considerations, Kentucky’s law includes the  
definition of a “public agency,” the timeframe within which an agency must respond to an OR  
request, and the types of information and records that are and are not subject to an OR request.  
KRS 61.870(i) defines Kentucky’s public universities as public agencies because the majority of  
the universities’ governing boards are appointed by a public agency or by a public agency’s  
employee (The Reporters Committee for Freedom of the Press, 2011). Universities are, therefore,  
subject to state OR laws. KRS 61.872(5) requires a state agency to either provide records  
requested via an OR request within three business days, or provide within three days an

explanation for a delay beyond three days. Exceptions for OR requests are described in KRS 61.878(1)(a)-(n), but KRS 61.871 states that “exceptions ... shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.” This appears to be a legislative acknowledgement that some public officials would prefer that some public information remain hidden.

The Better Government Association (BGA) evaluates states on following variables: “response time; appeals; expedited review; attorney’s fees and costs; and sanctions” (BGA, 2008, p. 2). The BGA reviewed language in state laws (including that of Kentucky) and determined that “[t]he tools available to citizens to enforce their rights under state [OR] laws are, with rare exception, endemically weak” (2008, p. 1). This is particularly troubling given Cordis and Warren’s 2014 findings that suggested that OR laws increased the likelihood that corrupt public officials would be prosecuted and that OR laws also helped prevent corruption among public officials. BGA ranked Kentucky 26th in level of openness and gave the state an “F,” a grade shared with 37 other states. Because of this lack of openness, citizens could be forced to rely on a public agency’s goodwill when seeking information. If an agency refused to supply the information, the citizen might or might not be prepared to take it further due to the hassle and expense of appealing the denial of an OR through the courts.

Stewart writes that “laws are inconsistent...from one jurisdiction to another...[and] the ways in which jurisdictions try to ensure compliance with these laws is haphazard” (Stewart, 2010, p. 298). This inconsistency is perhaps the most troubling aspect of noncompliance with OR laws. When state agencies unpredictably and incorrectly apply OR laws, interested public managers and nonprofit directors can be denied access to information that they have a right to see.

Multiple authors have written about the intersection of OR laws and state universities. Hearn and McLendon conducted interviews with “informed observers” at universities in six states (not including Kentucky) and described the situation as follows: “[o]n the continuum of interactions concerning public information, litigation occupies one extreme, and the informal exchange of information occupies the other. Between the two lie formal requests for release of public records under state law” (Hearn & McLendon, 2005, p. 30). In a 2006 article, McLendon and Hearn asserted the following:

[S]tate open-meetings and records laws influence virtually every major area of campus functioning: board deliberation and development, presidential search and selection, personnel policies, research and intellectual property issues, budget decisions and resource allocation, investments and financial holdings, business negotiations and transactions, university-affiliated foundations, and athletics (p. 647).

McLendon and Heard (2010) asserted that openness was widely seen as a good thing, although university leaders sometimes chafed at the awkwardness of conducting business openly.

McLendon and Hearn (2010) also acknowledged that OR laws sometimes created uncomfortable situations when one’s right to know competed with a university’s concern that progress toward its goals would be thwarted by sharing certain information. The media, for example, tends to believe that full disclosure of any and all facts is in the best interests of the public, but institutional leaders tend to think that it is actually in the public’s best interest to limit the dissemination of some types of information, particularly information involving real estate and financial transactions, board deliberations, or presidential searches. In 2006, McLendon and Heard explained that “the public good” was defined differently by different parties. Hearn and McLendon suggested that a decision about whether or not to make information public depended



on “privacy, the public’s right to know, and an institution’s need to function as effectively and efficiently as possible.” (Hearn & McLendon, 2005, p. 30). Hearn and McLendon, therefore, asserted that information that did not violate privacy or limit effectiveness and efficiency should be shared.

The literature on inequities faced by underrepresented minorities in the workplace includes articles on hiring officials’ implicit biases regarding gender, race, and ethnicity. The author identified six studies (four on hiring and two on evaluation) that studied whether or not, or to what degree, one individual expressed bias(es) toward another, particular when the one individual was in a position of power over the other. In 2003, Bertrand and Mullainathan conducted a field experiment and explained that their results implied “a White applicant should expect on average one callback for every 10 ads she or he applies to; on the other hand, an African American applicant would need to apply to 15 different ads to achieve the same result” (2003, p. 10). Richeson and Ambady (2002) found that study participants who expected to hold a lower position held “less biased” attitudes in comparison with the other participants who expected to hold a higher position (2002). Stewart and Perlow (2001) determined that that reviewers who were more racially biased had greater confidence in hiring the white applicant for the high-status job and greater confidence in hiring the black applicant for the low-status job than less biased reviewers. Regarding workplace climate, Ziegert and Hanges (2005) measured study participants’ explicit and implicit racial attitudes and found that African-American applicants were rated lower than white applicants in organizations with a climate that accepted racial bias. The two studies that focused on assessment of employee ability also found evidence of bias. Hamner, Kim, Baird, and Bigoness (1974) reported individuals’ tendencies to prefer high-performing white individuals over high-performing African American individuals. Biernat and

Kobrynowicz (1997) wrote that “when judges made objective estimates...they required a higher level of performance to infer ability in a Black than a White applicant but a lesser level of performance to meet minimum standards for a Black than a White applicant” (1997, p. 553).

This literature indicates that in the workplace, African American individuals were not treated the same as white individuals in hiring decisions and performance evaluations. Although past studies are informative, public managers would benefit from knowledge about current trends in public agencies’ personnel practices. Coupled with an extensive literature that supports and promotes the right to access public records, the author believed a survey of responses to a solicitation for information subject to OR laws, specifically demographic-related hiring data from Kentucky’s eight public, four-year universities was warranted. The focus of the survey was the types of responses from the universities, not an evaluation of actual data received.

### **Research Design**

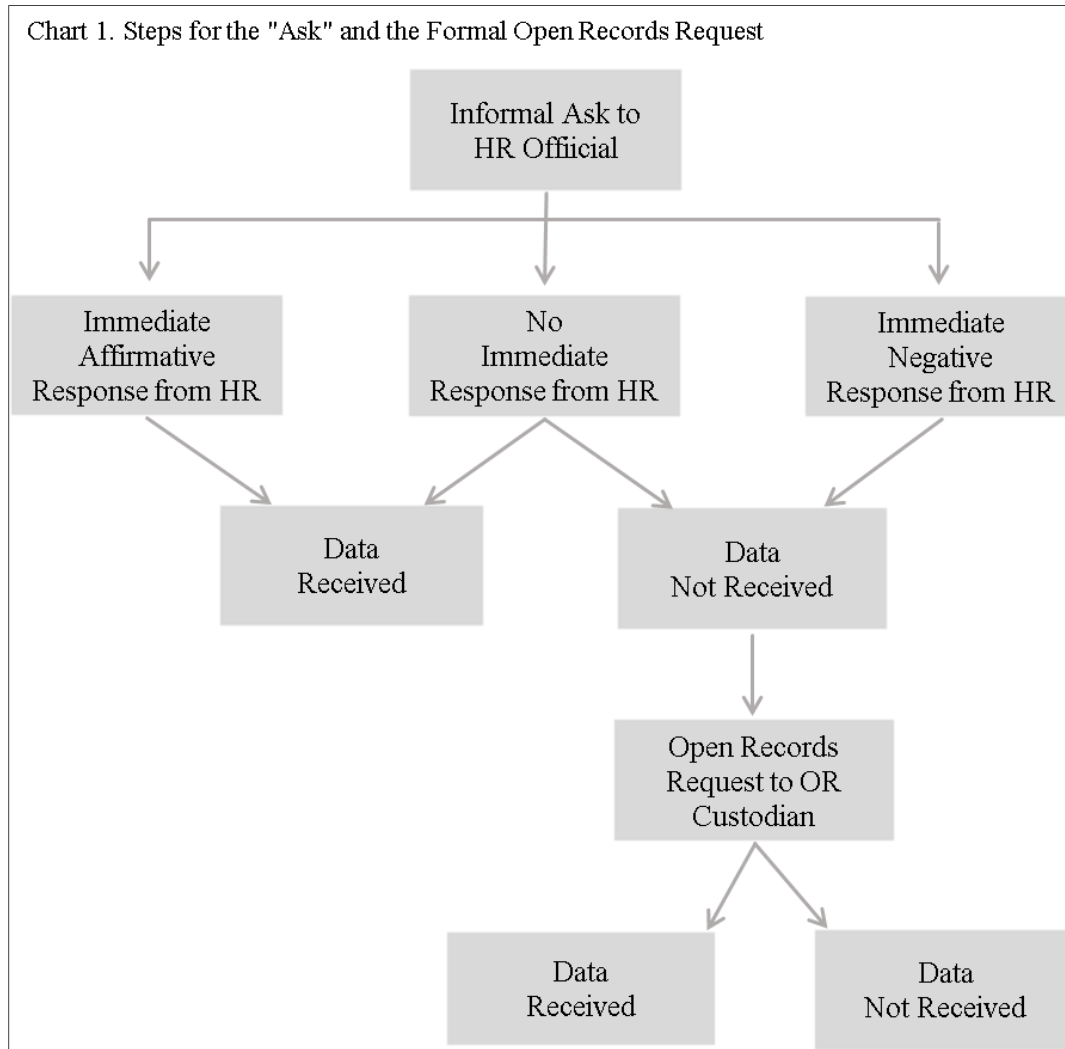
If a public manager interested in hiring trends wanted to know if a university was hiring a diverse workforce, perhaps the logical first step would be to simply query an appropriate official at an institution for the information. Seven of the eight public, four-year universities (KY State Univ. not included) use an automated, web-based application system that offers applicants the ability to voluntarily submit demographic data. Therefore, while data on gender, race, and ethnicity of applicants was likely not available for every applicant and hired employee, it was likely that at least some data was available from at least some institutions. The survey began with a presumption that aggregate data from the eight institutions on gender, race, and ethnicity of applicants and those hired for secretarial and clerical positions was subject to Kentucky’s OR laws. After initiating the survey, the author discovered that information was available through the Institute of Education Science’s National Center for Education Statistics, which offers public

access to the Integrated Postsecondary Education Data System (IPEDS), a national clearinghouse for higher education-related data. IPEDS includes reams of data on Kentucky's eight public universities, including the gender and race and ethnicity data for "office and administrative support" employees, for existing and new hires, for the period 2014-15.

In Kentucky, if a public agency does not respond to an informal query, the citizen (or for the purpose of this study the public manager) could make a formal OR request of the public agency to access the desired information. A public agency official could view an OR request by another public agency official as potentially malicious or misinterpret it, so contemplation of such an action may consultation with input from others.

The author developed a survey to obtain and catalogue the responses by Kentucky's eight public, four-year universities (Eastern KY Univ.; KY State Univ.; Morehead State Univ.; Murray State Univ.; Northern KY Univ.; Univ. of KY; Univ. of Louisville; and Western KY Univ.) received as a result of querying and/or requesting information about the gender, race, and ethnicity of applicants and those hired for clerical and secretarial positions during the period of July 1, 2014 – June 30, 2015. Chart 1 is a flow chart that outlines the steps for the informal query and the formal OR request. The information was first requested informally by email from the university's HR official and if that was unsuccessful, through the university's OR request process. To differentiate between the two different types of solicitations, the term "query" refers to the informal query made of the HR official. The term "OR request" refers to the OR request made by the author to the OR custodian.

The survey was conducted as follows. The author contacted each university's highest-ranking human resources officer via email (Appendix A). The author described the project as that of a master's student with a capstone project to finish and included the home institution's



name and the expected date of graduation. The author then explained a general topic of inquiry: “a review of gender and race and/or ethnicity of individuals who applied for secretarial and clerical positions, as well as the gender and race and/or ethnicity of individuals who were hired for secretarial and clerical positions at the eight public four-year universities in the Commonwealth of Kentucky.” The author explained there was a spreadsheet attached into which the HR official could enter information, if they wished (Appendix B). The author requested the information be from the period of July 1, 2014 – June 30, 2015 and include the following:

- Number of clerical and secretarial job openings for full-time positions;

- Number of applicants for the clerical and secretarial job openings for full-time positions;
- The gender and race/ethnicity of applicants; and
- The gender and race/ethnicity of those hired (Appendix A).

The author concluded with a request for data within 19 business days (by August 22) and also asked for a reply if the HR official expected to be able to comply.

If an HR official declined to provide the information or had not provided that information by August 31, the author moved to the next step, an OR request. The author searched each university's website to identify the required format for submitting an OR request. OR requests were worded the same as the query, but with the addition of a sentence invoking OR laws and the KRS, and were typically sent to a university's legal counsel. The author communicated with HR professionals and OR custodian as appropriate to reply, clarify, etc.

### **Results and Analysis**

Each of the eight institutions' HR officials were emailed on Monday, August 15, 2016 around noon. Only two universities responded to the query by the specified date (August 22), with the details requested, in all categories, and in the desired format. One institution supplied the information voluntarily, but did not reply until mid-September. The remaining five responses varied widely. Table 1 ("Summary of Results") summarizes information about both the query and (if needed) a formal OR request – whether or not the information was received; how many communications were involved; and the number of business days from the start of communications to the end.

Table 1. Summary of Results						
	<u>Informal Ask</u>			<u>Formal OR Request</u>		
	Received	Contacts <sup>*</sup>	Days <sup>†</sup>	Received	Contacts <sup>*</sup>	Days <sup>†</sup>
<b>Eastern KY Univ.<sup>‡</sup></b>	No	3	3 <sup>§</sup>	No	5	2 <sup>§</sup>
<b>KY State Univ.</b>	No	2	26	No	6	26
<b>Morehead State Univ.</b>	Yes	5	35	-	-	-
<b>Murray State Univ.</b>	Yes	3	19	-	-	-
<b>Northern KY Univ.</b>	No	2	26	Yes	3	9 <sup>  </sup>
<b>Univ. of KY</b>	Yes	3	19	-	-	-
<b>Univ. of Louisville</b>	No	2	1	No	6	23
<b>Western KY Univ.</b>	No	2	26	Yes	2	4

<sup>\*</sup> Contacts is the number of emails sent and received by the author and by university officials during the timeframe in the Days column.

<sup>†</sup> Days is the total working days during which the Contacts occurred, for both the ask and for the OR request. It was generally the number of working days between the day(s) the author sent the query (to either the HR official or the OR custodian) and the day(s) that either the university official sent the information or refused to provide the information. (For the universities that did not respond to the ask in any way, it was arbitrarily ended August 31 (after 26 days); OR requests were sent September 1.)

<sup>‡</sup> After returning to work (see footnote §, below), Eastern KY Univ.'s HR official sent the ask to the OR custodian without the author's knowledge or involvement.

<sup>§</sup> Eastern KY Univ.'s HR official and OR custodian each were absent some days during the survey. The Days column above for Eastern KY Univ. does not include days when an individual was absent. If the absent days were included, Eastern KY Univ.'s total ask days was 8 and total request days was 4.

<sup>||</sup> Because Northern KY Univ. only accepted OR requests via mail, the author used 3 days as the length of time the letter was in transit - the author did not know exactly when the institution received the OR request.

Eastern Kentucky University. Eastern KY Univ.'s HR official did not respond to the query, instead forwarding it to their OR custodian. Their OR custodian responded a couple of days later with a denial email, referencing the original query made of the institution's HR official. The denial stated that the author's request sought information rather than records and was overly broad in terms of both the amount of information sought and the time frame for which information was sought, as well as noted that the institution did not have "secretarial and

clerical positions” (Eastern Kentucky University’s open records custodian, personal communication, August 5, 2016).

Because the author had not corresponded directly with Eastern KY Univ.’s OR custodian, the author sent the complete OR request via email to the OR custodian, including the time frame. The author’s request was again denied, this time stating that Eastern KY Univ. did not have any positions titled “clerical” or “secretarial” and that the term “non-faculty employee” was overly broad. The OR custodian requested that the author narrow the request to identify the specific records the author sought, as well as the specific positions, adding that the author was requesting information instead of records (Eastern Kentucky University’s open records custodian, personal communication, August 17, 2016). Although the author requested types of positions, the OR custodian interpreted the request as being for specific job categories. The author responded by saying that Eastern KY Univ. had gender and ethnicity data available for secretarial and clerical positions as reported in IPEDS, so Eastern KY Univ. should have some record of categorizing some professional staff positions as clerical and/or secretarial. The author reiterated the request for records, including the time frame of July 1, 2014 through June 30, 2015.

The third and final response from the Eastern KY Univ. OR custodian (on September 1) stated that the institution did not have “clerical” or “secretarial” positions. The email included a “print-out of the current open positions at Eastern Kentucky University, as your request did not state a specific time period for which records are sought” (Eastern Kentucky University’s open records custodian, personal communication, September 1, 2016). The OR custodian also included a link to open positions on the institution’s online job listing site. The OR custodian explained that because a specific time period was not included in the OR request, information about currently open positions was sent. The denial email newly referenced KRS-related

exceptions, stating that because the applicants were for positions currently open and not yet filled, they were not subject to disclosure because KRS.61.61[sic].878(l)(i) and (j) exempted them as being preliminary data. The author did not request information about currently open positions – the author requested information for the period between July 2014 and June 2015. The OR custodian also denied the request as per the exception noted in KRS 61.878(l)(a) as being of a personal nature and a clear invasion of personal privacy.

This last email from Eastern KY Univ.’s OR custodian included the institution’s 2015-16 IPEDS HR survey component; the OR custodian explained that there were no "clerical" or "secretarial" categories in that report. While that was indeed the case, the IPEDS HR report certainly did include information for office and administrative support operations, which could also be described as being of a “clerical” or “secretarial” nature. The Eastern KY Univ.-related information in the IPEDS report clearly put employees into the two categories of “faculty” and “staff,” which is interesting given the OR custodian’s prior statement that the term “non-faculty” was overly broad.

Eastern KY Univ. did respond to the OR request within the mandated three business days. The university denied that the requested records existed, denied that any such category of employee existed, and although the author requested information from July 1, 2014 – June 30, 2015 at least twice, the OR custodian instead (inexplicably) denied access to information about open job positions as of September 1, 2016 because information about applicants for currently open positions was excluded by KRS due to it being preliminary data; the OR request was also denied on privacy grounds. The OR custodian had access to Eastern KY Univ.’s IPEDS HR report from 2015-16, which included information about newly hired “administrative and office



support” employees as well as those currently employed in those categories, so it is not clear why the custodian did not send the IPEDS report for the year the author requested, 2014-15.

Kentucky State University. The author emailed the query to the KY State Univ. HR official on July 27 and sent a reminder to the HR official on August 15. Having had no communication from the HR official, the author sent an email with a formal OR request that the KY State Univ.’s OR custodian received on September 1, 2016. The author emailed the institution’s OR custodian on September 14 to check on that request. Later that day, the KY State Univ.’s OR custodian replied to ask for permission to respond by September 30. The author replied the same day (although after 5 pm) to indicate that September 30 was acceptable. On October 5 the author emailed the OR custodian again to check on the response. The KY State Univ. OR custodian denied the request the following day (October 6), stating that there were no institutional records that tracked the (clerical and secretarial) data the author requested. The OR custodian explained the delay in responding as being due to making sure there was no department that tracked that information, concluding that there were no records there that would be “responsive to your request” (Kentucky State University’s open records custodian, personal communication, October 6, 2016). State law (KRS 61.872(5)) requires public agencies to respond to an OR request within three business days, at least to provide information about when it will respond; KY State Univ. not in compliance with this law, regardless of the explanation.

Regarding the terminology used (“number of clerical and secretarial job openings for full-time positions”), KY State Univ.’s employment site included multiple openings for an “administrative assistant” so KY State Univ.’s OR custodian also interpreted “clerical and secretarial job openings” to be a request for job categories that included those specific words, not as general adjectives to describe the type of work being done. KY State Univ. was the only

university that did not have a web-based, online application system. Job applicants are instructed to download an application, complete and fill it out, sign it, and scan and attach it to an email sent to a particular person; any cover letter or résumé is optional. Perhaps because the application system is not automated, the university also does not solicit information about the gender, race, or ethnicity from applicants. Nonetheless, IPEDS did report the gender and race and ethnicity of its existing employees, so KY State Univ. appears to have had that information somewhere.

Morehead State University. Also on July 27, the author emailed Morehead State Univ.'s HR official to ask for the gender, race, and ethnicity of applicants for clerical and secretarial positions. The author sent a reminder to the HR official on August 15. (Multiple institutions received a reminder on this date.) Morehead State Univ.'s HR official replied that day and apologized for overlooking the first email. The HR official said the information would be sent by August 29. On August 31, the author emailed the HR official to check in. The HR official replied on September 13 and the email included all the requested information.

Murray State University. The author emailed the HR official at Murray State Univ. on July 27 with a query for information and received a response the following day in which the HR official said the team at Murray State Univ. would compile the information and send it by August 22. The author sent an email reminder on August 15. A Murray State Univ. employee sent all the information, as requested, on August 22.

Northern Kentucky University. The author emailed Northern KY Univ.'s HR official on July 27 with the query for the applicant-related gender and race and ethnicity information. The author sent a reminder to the HR official on August 15. The author's next step was to make a formal OR request. Northern KY Univ.'s website, however, did not include information on how to submit an OR request so the author called the institution's Office of the Vice President for

Legal Affairs and General Counsel and asked how to make such a request. While seven institutions required submissions via email, Northern KY Univ. was the only institution that required OR requests to be submitted via the United States' Postal Service – requests by phone, email, and fax were not honored. The author mailed a letter on September 20 to an address listed on the website of the Vice President for Legal Affairs and General Counsel (VPLAGC). On October 3, the author called the VPLAGC's office to ask if they had received the OR request. The individual who answered the phone apologized for not sending a response earlier. The individual reported that the request was with HR, which would make the information available soon. On the same day, the office assistant for Northern KY Univ.'s general counsel emailed the author to acknowledge receipt of the author's request. The office assistant explained that the institution was in the process of collecting the information the author requested but could not send the information until October 6. On October 5, however, the office assistant formally responded to the author's OR request with the data the university was able to provide, but not all the information for which the author asked. The assistant explained that the university did not code positions as "clerical," so the data provided included only applicants for positions identified as secretarial (Northern Kentucky University's open records custodian, personal communication, October 5, 2016). The data included information on applicants who were hired, not all applicants as requested. The office assistant's email was not clear about the timeframe of the information and no dates were mentioned in the email.

University of Louisville. The author emailed the Univ. of Louisville's HR official on July 27. The HR official replied within *five minutes* to say that the university would be unable to provide the requested gender and ethnicity and race data for applicants for secretarial or clerical positions. The author submitted an OR request to the institution's OR custodian later in the day

on July 27. One week later on August 3, the author emailed the Univ. of Louisville's OR custodian to check on the status of the request; the OR custodian's designee replied the following day to deny the request. The justification for denial was that the Univ. of Louisville did not classify positions as "secretarial" or "clerical" – included in the email was a web address for the list of then-current job openings at the Univ. of Louisville, as well as the institution's job classifications (University of Louisville's open records custodian, personal communication, August 3, 2016). The author responded that the information was available through IPEDS so the Univ. of Louisville should have it available somewhere. The author also noted that if applicant-related information was not available, information for applicants who were hired would be acceptable. Seventeen business days later, the Univ. of Louisville's designee for the OR custodian replied again to deny the request. The OR custodian's designee explained that there were not any known lists that contained the detail the author sought. The designee stated that it appeared the author was seeking information rather than the "records" as prescribed in the state's OR laws. The OR custodian's designee welcomed an OR request that more explicitly described the documents being sought (University of Louisville's open records custodian, personal communication, August 4, 2016).

The Univ. of Louisville did not respond to either of the author's OR request within the KRS-prescribed three business days. Once again, although the author did not request information on specific job categories, the institution used its lack of specifically named categories as the rationale for denying the author's OR request. The employment page on the Univ. of Louisville's website, however, did describe its staff-related positions as "exempt, with professional, administrative and management responsibilities or duties; and non-exempt with paraprofessional,

administrative, *clerical, secretarial* [emphasis added], technical, skilled crafts, service, or maintenance duties” (Univ. of Louisville, HR current openings site, 2016).

University of Kentucky. On July 27, the author emailed the Univ. of KY’s HR official and sent the previously described query about applicants and those hired. The author emailed a reminder to the HR official on August 15. On the requested date, August 22, the Univ. of KY’s employment manager sent the author all the information requested, with additional details. The HR official’s designee also included notes to explain details of the information provided. First, the Univ. of KY acknowledged that applicants reported gender-, ethnicity-, and race-related data on a voluntary basis, which was not shared with departments or hiring officials. Next, the employment manager explained which categories of employees were used in the report sent to the author, as well as the sub job categories. The manager noted that numbers might not add up because the category “Hispanic or Latino” was considered an ethnicity – applicants could then also self-identify their race (University of Kentucky’s open records custodian, personal communication, August 22, 2016).

Western Kentucky University. The eighth and final institution queried was Western KY Univ. The author emailed its HR official on July 27 and sent a reminder on August 15. The HR official never responded, so the author emailed an OR request to the OR custodian, which was received on September 1. The OR custodian replied four business days later on September 6. Western KY Univ. did submit the data electronically as requested, but instead of a spreadsheet, Western KY Univ. sent its Affirmative Action Plan in Adobe Acrobat (PDF) format. Western KY Univ. did not send information for the period requested by the author (July 1, 2014 – June 30, 2015), but rather sent information for the period September 1, 2015 through August 31, 2016. The Affirmative Action Plan was marked “privileged and confidential” and was comprised of

information, primarily at the individual level (sometimes individually identifiable level), about the following: workforce analysis by department and by job group availability; utilization analysis summary; goals; external recruitment area back-up data; internal feeder group back-up data; narrative discussion and prior year reports; personnel activity reports, including info about new hires; placement analysis; new hires; promotions; and terminations (aggregate level); impact ratio analysis; affirmative action plan study; and disability utilization analysis summary. Not only was the data at the individual level, *in some instances it included the individual's first and last name, race, gender, job title, job group, hire date, and department* (Western Kentucky University's open records custodian, personal communication, August 5, 2016). Western KY Univ. did not respond to the query and although it did respond to the formal OR request, it did not do so within the KRS-mandated time frame of three business days. Its response to the OR request did not provide the information in the format requested yet it provided far more detail than the author requested or wanted.

### **Limitations**

The survey revealed inconsistencies and overall unpredictability in university responses to a solicitation for information, but future surveys and research could benefit from this survey's limitations. It was difficult to standardize the dates for contact among the universities because universities responded to queries and OR requests on different days and times. In addition, the terminology about position types used by the author matched the Univ. of KY's terminology. Also regarding terminology, it may not have been clear to every university that the survey language about "clerical and secretarial positions" was intended to be generally descriptive, not a reference to specific job titles. The author was known to the Univ. of KY's HR official who

received the informal query, which may have affected that HR official's response. The author clearly noted in the query that the data would be used for a graduate student capstone project; it is not known if this introduced bias into the survey. The survey did not control for variability in the demographics of the HR officials and OR custodians who were the survey respondents; considerations such as age, training, gender, etc. were not accounted for. The final two possible limitations pertained to the subject of the solicitations. The topics of gender, race, and ethnicity can be emotionally and politically charged, which could have affected respondents' actions. Finally, it is not clear how the responses could have changed if the author had asked for something related to a current public relations "situation."

The current context was that some universities were preoccupied with then-pressing current events. In June 2016, Kentucky's Governor Matt Bevin dissolved the Univ. of Louisville's governing board, reconstituted it with fewer members, and was involved in discussions that resulted in its president offering his resignation (Loftus, Watkins, & Wolfson, 2016). The Univ. of KY was embroiled in a handful of OR-related lawsuits with the city newspaper and the institution's student-run, independent newspaper regarding: records involved in a university-associated foundation's support of a dissolved cardiac care practice; a presentation to the Univ. of KY's governing board that the institution refused to share with the media (Blackford, 2016); and sexual assault complaints by students against a former professor (Kaufman, 2016).

### **Conclusions**

One of the most striking aspects of the survey was the lack of consistent responses from Kentucky's eight public, four-year universities. Murray State Univ.'s HR official responded within one business day to say the information would be compiled and submitted by the deadline

and it was. The Univ. of Louisville's HR official also responded quickly (less than five minutes) but it was to say the Univ. of Louisville was unable to provide the data. Eastern KY Univ.'s HR official did not respond to the author's query, but rather handed the issue off to the university's legal counsel, who treated the query as an OR request and denied it based on confidentiality and privacy concerns. Western KY Univ. did not respond to the informal query, but did respond to the OR request, although the information provided was an Affirmative Action Plan with more than 1,000 pages and hundreds of tables, one of which included every employee's first and last name, their gender, race, and ethnicity, and their job title and department name (Western Kentucky University, Affirmative Action Plan, 2015 - 2016).

A review of descriptive information about the universities, as summarized in Table 2 ("Demographic Information about Kentucky's Eight Public, Four-Year Universities"), did not offer any obvious explanation for the varied responses. Eastern KY Univ. had the highest percentage of employees in the category with HR officials, but its HR official forwarded the query to the OR custodian without responding to the survey. KY State Univ. had the highest percentage of staff employees in the category that included attorneys and paralegals, which were the two employee groups most likely to be involved in an OR request, so lack of personnel was not a factor in its inability to find the requested information (see page 16). Morehead State Univ. was one of the smaller universities in terms of total number of employees, yet it was able to respond to the query, albeit it was somewhat later than requested. Murray State Univ. was neither the highest nor the lowest in any category, yet it acknowledged the author's query the day after receiving it and provided the data on the date requested, in the format requested. The Univ. of KY had a low percentage of staff in the job category that included HR officials, yet its HR official responded to the author's query with the most detailed information, seemingly without



Table 2. Demographic Information about Kentucky's Eight Public, Four-Year Universities

Institution Name	General Demographics		Financials		Students		Employees		
	Information Received?	Population Estimate for City* (2014)	Net Position Yr. (FY 2013-14)	Value of Endowment Assets at End of Fiscal Yr. (FY 2013-14)	Total Price for In-State Students Living on Campus (AY 2014-15)	Total Full-Time Students (AY 2014-15)	% of Staff in Business and Financial Operations (FY 2014-15)	% of Staff in Community Service, Legal, Arts, & Media (FY 2014-15)	Total Staff FTEs (FY 2014-15)
EKU	No	32,952	\$ 320,693,911	\$ 62,082,933	\$ 19,748	11,950	9.36%	5.59%	2,255
KSU	No	27,620	\$ 110,017,536	\$ 15,303,098	\$ 18,194	1,451	3.35%	15.61%	538
Morehead	YES	6,984	\$ 178,256,654	\$ 44,200,399	\$ 19,525	6,495	5.24%	11.25%	1,164
Murray	YES	18,604	\$ 240,612,199	\$ 69,320,273	\$ 19,414	8,080	5.19%	7.57%	1,427
NKU	YES	7,184	\$ 310,094,000	\$ 95,093,000	\$ 20,528	10,204	7.38%	10.86%	1,409
UK	YES	311,399	\$ 3,143,851,901	\$ 1,215,225,687	\$ 25,330	26,469	4.09%	3.99%	12,093
UofL	No	612,821	\$ 693,807,000	\$ 876,825,000	\$ 24,344	16,459	6.15%	4.04%	5,711
WKU	YES	62,549	\$ 366,442,415	\$ 15,992,204	\$ 19,144	14,228	1.79%	12.30%	2,456

\*As computed by the U. S. Census Bureau

**Legend:**

AY=academic year

FY=fiscal year

Column high value

Column low value

EKU = Eastern KY Univ.

KSU = KY State Univ.

Morehead = Morehead State Univ.

Murray = Murray State Univ.

NKU = Northern KY Univ.

UK = Univ. of KY

UofL = Univ. of Louisville

WKU = Western KY Univ.

NCES. (2016, November 5). IPEDS Dataset. Retrieved from <https://nces.ed.gov/ipeds/datacenter/Data.aspx>

U.S. Census Bureau, Population Division. (2016) Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2015. Release Dates: For Cities and Towns (Incorporated Places and Minor Civil Divisions), May 2016. Retrieved from <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bknnk>

trouble. The Univ. of Louisville was situated in the city with the largest population, perhaps offering an advantage regarding the likelihood that an applicant/employee would be well versed in relevant OR-related laws, but it rejected the author's query and denied the OR request on the grounds that the author asked for information, as opposed to the "records" referred to in state law.

There was no immediate or obvious indicator to explain why any of Kentucky's eight public, four-year universities responded in the ways they did. Two universities used a strict interpretation of the language ("clerical and secretarial") but it was not clear why no other universities interpreted the survey the same way. The variation in responses to the survey's query and OR request appears to justify some level of public distrust in Kentucky's eight public, four-year universities. Public managers, nonprofit directors, and even citizens are limited in their ability to access data to shed light on whether there is evidence of bias in universities' hiring decisions. The lack of consistency in the responses to the OR requests demonstrated that there was no consistent application of OR laws among Kentucky's public, four-year universities when asked for demographic-related hiring data.

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Appendix A

Letter Sent to Human Resources Professionals Requesting Information on Gender, Race, and  
Ethnicity of Individuals who Applied for and Were Hired for Secretarial and Clerical  
Positions, Between July 1, 2014 and June 30, 2015

Subject: Request for HR Data - Graduate Student Project

Good afternoon, [Madam or Sir]. I am writing to request human resources-related data from [institution name] to complete a capstone project. I am working towards a master's in public administration degree through the Martin School of Public Policy and Administration at the University of Kentucky (estimated graduation date December 2016).

Specifically, my topic involves a review of gender and race and/or ethnicity of individuals who applied for secretarial and clerical positions, as well as the gender and race and/or ethnicity of individuals who were hired for secretarial and clerical positions at the eight public four-year universities in the Commonwealth of Kentucky.

I have attached a spreadsheet into which the information can be entered, if that would be helpful for you. I respectfully request the following information for the period of July 1, 2014 – June 30, 2015:

- Number of clerical and secretarial job openings for full-time positions;
- Number of applicants for the clerical and secretarial job openings for full-time positions;
- The gender and race/ethnicity and ethnicity of applicants; and
- The gender and race/ethnicity of those hired.

Could you please let me know if you are able to provide me with this information by August 22? If I have not heard from you by the middle of August, I will send a reminder email to check in.

I am happy to answer any questions you may have about this academic project.

With best regards,

Sheila Brothers  
<10-digit cell phone number>  
<student email address>

Appendix B

Fillable Spreadsheet Sent to Human Resources Officials for Use in Providing Information on  
Gender, Race, and Ethnicity of Individuals who Applied for and Were Hired for Secretarial  
and Clerical Positions, Between July 1, 2014 and June 30, 2015

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
1	Full-time Clerical and Secretarial Employees, J																	
2	Number of clerical & secretarial positions filled:			American Indian or Alaska Native			Asian			Black or African American			Hispanic or Latino			Native Hawaiian or Other Pacific Islander		
3				Female	Male	Unknow	Female	Male	Unknow	Female	Male	Unknow	Female	Male	Unknow	Female	Male	Unknow
4	Applicants for Positions																	
5	Those Hired for Positions																	
6																		

R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF
July 1, 2014 - June 30, 2015 (gender and race/ethnicity)														
Native Hawaiian or Other Pacific Islander			White			Two or more races			Race/ethnicity unknown			Nonresident alien		
Female	Male	Unknow	Female	Male	Unknow	Female	Male	Unknow	Female	Male	Unknow	Female	Male	Unknow